

REGULAR

ORDINANCE NO. 227.3

TITLE: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS AMENDING CHAPTER 215 OF TITLE V TO THE MILPITAS MUNICIPAL CODE RELATED TO PROHIBITIONS ON SMOKING AT ENTRANCES TO CITY-OWNED BUILDINGS

HISTORY: This Ordinance was introduced (first reading) by the City Council at its meeting of January 7, 2003, upon motion by Councilmember _____ and was adopted (second reading) by the City Council at its meeting of _____, 2003, upon motion by Councilmember _____. Said Ordinance was duly passed and ordered published in accordance with law by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Gail Blalock, City Clerk

Jose Esteves, Mayor

APPROVED AS TO FORM:

Steven T. Mattas, City Attorney

ORDAINING CLAUSE:

THE CITY COUNCIL OF THE CITY OF MILPITAS DOES ORDAIN AS FOLLOWS: |

Section 1. **Findings.** State law presently prohibits smoking in enclosed places of employment, and Chapter 215 of Title V of the Milpitas Municipal Code incorporates by reference those provisions of state law and sets out the City's enforcement authority with respect to state law. This purpose of this ordinance is to add additional permissible restrictions on smoking in certain unenclosed public places, more specifically at entrances to City-owned buildings. The City Council has received information from the public that some bothersome smoking permissible under state law continues despite the known health risks to smokers and of secondhand smoke. The Council's intent in adopting this ordinance is to preserve and improve the health of the residents and workers of the City by reducing their exposure to secondhand smoke and the harmful effects thereof on human health.

Section 2. **Amendment of Chapter 215 of Title V.** Chapter 215 of Title V of the Milpitas Municipal Code is hereby amended as follows with ~~struck out~~ text indicating a deletion and double underlined text indicating an addition:

Chapter 215

REGULATING SMOKING IN ~~ENCLOSED PLACES OF EMPLOYMENT~~

~~Section 1 Purpose and Intent~~

V-215-1.10 Smoking in Enclosed Places of Employment; Purpose and Intent

For purposes of regulating smoking in enclosed places of employment, the City Council hereby adopts and incorporates as if set out at length herein, California Labor Code Section 6404.5, as now written and as amended from time to time. A copy of California Labor Code Section 6404.5 shall be available for inspection during regular business hours in the office of the City Clerk.

V-215-1.20 Prohibition of Smoking in Public Places

Smoking shall be prohibited in the following areas:

1. Within 20 feet of entrances, exits, open windows, and ventilation-intake systems of any building owned or leased by the City of Milpitas.

V-215-1.30 Posting of Signs

"Smoking" or "No Smoking" signs, whichever are appropriate, with letters of not less than one inch (1") in height, or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) shall be clearly, sufficiently, and conspicuously posted in or outside of every building or other place where smoking is controlled by this chapter, by the owner, operator, manager, or other person having control of such building or other place. When a sign is posed on the exterior of a building to indicate "No Smoking," it shall include the distance limitations contained in this chapter.

~~Section 2 Inspection~~

~~V-215-21.10-40~~ Inspection

The City Manager, or his or her designee(s), shall have the authority to enforce provisions of this Chapter. Such enforcement shall include the right to enter places of employment, as defined in California Labor Code Section 6404.5, at any time during regular business hours for the purpose of making reasonable inspections to observe and enforce compliance with this Chapter.

V-215-1.50 Penalty

Persons violating section 1.20 of this Chapter shall be guilty of an infraction.

~~Section 3 Repeat Violations~~

~~V-215-31.10-60~~ Violations Reports to State

If any person is convicted of a third violation of this Chapter state law provisions concerning smoking in enclosed places of employment within one year, a report of all three violations shall be made to the Compliance Section of the Division of Occupational Safety and Health in the California Department of Industrial Relations. (Ord. 227.2 (part), 5/2/95)

Section 3: ***Severability.*** If any provision of this ordinance or the application thereof to any person or circumstance is held invalid or unenforceable by a court of competent jurisdiction, the remainder of the ordinance, including the application of such part or provision to other persons or circumstances shall not be affected thereby and shall continue in full force and effect. To this end, provisions of the ordinance are severable. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clause, or phases, or the application of any of the foregoing to a particular person or circumstance, be held unconstitutional, invalid, or unenforceable.

Section 4: ***Effective Date; Publication.*** This Ordinance shall take effect _____, 2003, and prior to the expiration of 15 days from the passage thereof shall be published at least once in the Milpitas Post, a newspaper of general circulation, published and circulated in the City of Milpitas, County of Santa Clara, thenceforth and thereafter the same shall be in full force and effect.